IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO.1636 OF 2004

Shahzad Sarkar Aga Khan .... Petitioner

Vs.

The State of Maharashtra & Anr. .... Respondents

Shri C.K. Talekar for the Petitioner.

Shri D.S. Mhaispurkar, Addl. Public Prosecutor, for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &

P.V. KAKADE, JJ.

DATED: MARCH 24, 2005

P.C:

1. The learned Advocate for the petitioner states that in view of the statement in the affidavit in-reply that the father of the petitioner had informed the police authorities that he desires that his flat may remain sealed so that in his absence the same may not be used for any other purpose and that he had requested the police authorities not to allow anybody to get the suit flat unsealed, the petitioner craves leave to withdraw

the petition.

2. There is no difficulty for allowing the petitioner to withdraw the petition. However, it is seen from the petition that it was the case of the petitioner that the father of the petitioner is not keeping well for a long time and he has lost the power of the limbs and has been advised bed-rest. One fails to understand that if the father has lost the power of the limbs, how could he have signed the letter which is stated to have been addressed to the Senior Inspector of Police on 10-12-2004 specifically expressing desire that the premises should be kept under seal and the petitioner neither denies such letter by his father nor disputes about the genuineness of the said letter. It is also pertinent to note that though the residential premises of the father of the petitioner and that of the petitioner seems to be different, both are situated in the same town, namely, Old Lucknow. This is apparent from the address of the petitioner in the petition as well as when compared with the address of the father of the petitioner in the letter addressed to the Senior Inspector of Police. The letter which was written by the father is dated 10-12-2004. The present petition came up for hearing for the first time before this Court on 14-1-2005, and again on 7-2-2005, 17-2-2005 and thereafter on 17-3-2005. On all these occasions the

petitioner was represented by his Advocate. However, at no point of time, till this date, it was revealed to the Court on behalf of the petitioner that any such letter had been addressed to the Senior Inspector of Police by the father of the petitioner expressing his desire that the flat should continue to remain sealed. Undisputedly, the flat was sealed on account of having found to have been used as a brothel.

3. It is, therefore, apparent that it is only because the respondents disclosed to this Court in the affidavit in-reply that such a letter was sent to the Senior Inspector of Police that the petitioner has now thought it fit to withdraw the petition, otherwise the said fact was conveniently suppressed from the Court.

4. In the circumstances, therefore, it is apparent that there was an attempt to mislead the Court. Besides, the valuable public time has been wasted by the petitioner. Being so, while allowing the withdrawal of the petition, it needs to impose exemplary costs and therefore the petitioner is allowed to withdraw the petition. In the circumstances, though the petition is allowed to be withdrawn, the petitioner shall be liable to pay exemplary costs. We are clearly fortified in the view that we are taking in the matter by the decision of the Apex Court in the matter of **Shrimati Vidya Verma,**

through next friend R.V.S. Mani v. Dr. Shiv Narain Verma, reported in [1955] 2 SCR 983. The petitioner shall pay the costs of Rs.10,000/-. Such costs shall be deposited with the Registry within three weeks and on deposit of such costs, the same shall be credited to the account of the Maharashtra State Legal Services Authority. The petition accordingly stands disposed of as withdrawn, on payment of costs as above.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)